

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARCO ANTONIO MEJIA,

Defendant.

8:21-CR-251

MEMORANDUM AND ORDER

This matter is before the Court for its review of the Magistrate Judge's Findings and Recommendation, [Filing 43](#), recommending Defendant's Motion to Dismiss, [Filing 32](#), be granted and the Indictment, [Filing 26](#), be dismissed without prejudice. Defendant timely filed an objection to the Findings and Recommendation, asking the Court to dismiss the Indictment with prejudice. [Filing 44](#). Pursuant to 28 U.S.C. § 636(b)(1)(C), the Court has conducted a de novo review of the Magistrate Judge's Findings and Recommendation. The Court concurs in the Magistrate Judge's factual findings and legal analysis.

The Magistrate Judge found that the defendant in this case was arrested on August 18, 2021. Under 18 U.S.C. § 3161(b), the government has thirty days from a defendant's arrest to indict the individual if a grand jury is in session during the thirty days following arrest. Otherwise, the "charge against that individual . . . shall be dismissed or otherwise dropped." 18 U.S.C. § 3162(a)(1). A grand jury was in session on August 18 and August 19, 2021, yet the defendant was not indicted until September 24, 2021. No party filed a formal objection to the Magistrate's determination that dismissal was warranted, but Defendant objects to the Magistrate's recommendation that the dismissal should be without prejudice.

“In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice.” 18 U.S.C. § 3162(a)(1); *United States v. El-Amin*, 574 F.3d 915, 922 (8th Cir. 2009). The defendant is charged with violating 18 U.S.C. § 922(g)(5)(A), a Class C felony involving a firearm. 18 U.S.C. § 924(a)(2); 18 U.S.C. § 3559(a)(3). Thus, this Court agrees with the Magistrate Judge that the seriousness of the offense weighs in favor of dismissal without prejudice. The Court also concurs with the Magistrate Judge’s assessment of the facts and circumstances surrounding the delay in indicting the defendant in this case. The limited time available to bring the case before the August grand jury after Defendant’s arrest, that there was no other grand jury scheduled or convened in the District of Nebraska until more than thirty days after the August grand jury completed its work, and the lack of anything in the record indicating the government benefitted from the delay lead the Court to conclude that the facts and circumstances surrounding the delay in this case do not warrant dismissal with prejudice. The Court further finds that any impact on the administration of justice caused by the delay in indicting the defendant is minimal, and dismissal with prejudice is not warranted. Accordingly,

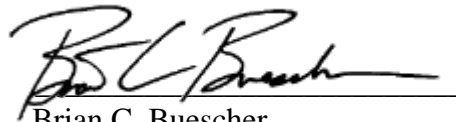
IT IS ORDERED:

1. Defendant’s Objection, [Filing 44](#), to the Magistrate Judge’s Findings and Recommendation, [Filing 43](#), is overruled;
2. The Magistrate Judge’s Findings and Recommendation, [Filing 43](#), is adopted;
3. Defendant’s Motion to Dismiss, [Filing 32](#), is granted without prejudice;
4. The Indictment, [Filing 26](#), is dismissed without prejudice; and

5. The Clerk of the Court is ordered to terminate the pending motions at [Filing 32](#), [Filing 43](#), and [Filing 44](#).

Dated this 18th day of January, 2022.

BY THE COURT:

A handwritten signature in black ink, appearing to read "B.C. Buescher", written over a horizontal line.

Brian C. Buescher
United States District Judge